



April 10, 2002

Mr. Michael R. Little
District Attorney
Chambers and Liberty Counties
P.O. Box 4008
Liberty, Texas 77575

OR2002-1774

Dear Mr. Little:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161141.

The Office of the District Attorney for Liberty and Chambers Counties (the “district attorney”) received a request for “all Chambers County Narcotics Task Force case logs for the year 2001 including juvenile cases[; and a] copy of the Chambers County Narcotics Task Force Racial Profiling Policy. You state that the Racial Profiling Policy and some additional responsive information will be released to the requestor. You claim, however, that portions of the Task Force logs are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You claim that references in the Task Force logs to juvenile cases are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Family Code § 58.007(c).

Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997.¹ The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.² You inform us that the information in question concerns conduct that occurred on or after September 1, 1997. A portion of the information on its face shows that it involves individuals who were each a “child” for purposes of section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply; therefore, the information that you have highlighted on page 4 (lines 14 and 21), and page 5 (lines 22 and 24) is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code. We note however, that we have no basis to conclude that the highlighted information on page 10 (lines 16 and 17) concerns an individual who was a “child” for purposes of section 58.007(c). Thus, this information is not confidential pursuant to section 58.007(c) of the Family Code, and must be released to the requestor.

The informer’s privilege, incorporated into the Open Records Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must

¹See Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996).

²See Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code).

be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990) , 515 at 4-5 (1988). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). You inform us that the highlighted information marked "CI" refers to "confidential informant[s]." You represent that these individuals have reported a violation or possible violation of the law to officials charged with enforcement of that law. You state that to reveal the identities of these informants would endanger their lives and safety, and interfere with the investigation and prosecution of the reported offense. The identities of informants that you have highlighted on page 2 (lines 1, 12, and 31) are excepted from required public disclosure by the informer's privilege and section 552.101.

You claim that other references in the logs are protected from disclosure under section 552.108 of the Government Code. Section 552.108 provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication [.]

Gov't Code § 552.108(a)(1),(a)(2), (b)(1), (b)(2). A governmental body that raises section 552.108 must reasonably explain, if the information in question does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You represent to this office that the references in the logs that are designated as "open" or "UC open" relate to cases in which an arrest has yet to be made. You assert that the release of the references to these cases would interfere with the investigation and prosecution of the suspects noted in the logs. You indicate that some of these cases involve undercover investigations and confidential informants. Based on your representations and our review of the information for which you claim an exception under section 552.108(a)(1), we find that you have demonstrated that the release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, the following highlighted references in the logs are excepted from disclosure under section 552.108(a)(1): page 1 (lines 2, 4-7, 14 and 15), page 2 (lines 1, 11, 12, and 31), page 3 (lines 5-8, 28, and 29), page 4 (lines 12, 13, and 30), page 5 (lines 3, 4, 13, 16-19, 25, and 26), page 6 (lines 4, 9, 10, 11, and 24-26), page 7 (lines 1-7), page 8 (line 24), page 11 (lines 1 and 2), page 12 (lines 6-8), page 13 (lines 12 and 13), page 14 (line 7-9, 20, and 26-30), and page 15 (lines 9-11). *See also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978).

You further represent that the references in the logs that are designated "do not prosecute," "DA refused," or "do not file" concern specific cases which are excepted from disclosure by sections 552.108(a)(1) and (b)(1), and also by sections 552.108(a)(2) and (b)(2). Generally speaking, sections 552.108(a)(1) and 552.108(a)(2) apply to two mutually exclusive types of information held by a law enforcement agency. The same is true for sections 552.108(b)(1) and 552.108(b)(2), which are also mutually exclusive. Sections 552.108(a)(1) and (b)(1) protect information that pertains to a pending criminal investigation or prosecution. In contrast, sections 552.108(a)(2) and (b)(2) protect records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. You inform this office that the requested information pertains to certain investigations that concluded in a result other than conviction or deferred adjudication. Based on your representations, we conclude that the highlighted information on page 1 (lines 7 and 15), page 5 (line 17), and page 15 (line 8) pertains to concluded criminal investigations or prosecutions that did not result in a conviction or a deferred adjudication. This information may be withheld from disclosure pursuant to section 552.108(a)(2) and (b)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of this basic information, you may withhold the above detailed information based on section 552.108. Because we are able to

resolve the matter under sections 552.101 and 552.108, we do not address the section 552.103 assertion.³

In summary, the highlighted references in the Task Force logs to juvenile cases on page 4 (lines 14 and 21), and page 5 (lines 22 and 24) are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, while the cases on page 10 (lines 16 and 17) must be released. The district attorney may withhold the identities of informants that are highlighted on page 2 (lines 1, 12, and 31) under section 552.101. The remaining highlighted references in the logs are excepted from disclosure under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

³Front page offense report information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 161141

Enc. Submitted documents

c: Mr. David A. Hawes
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(w/o enclosures)